

AG Contract No.: KR04-1419TRN

ADOT ECS File No.: JPA 04-046

TRACS: H668601C

Project No.: I-8-1(41)6

Section:

Budget Source Item No.: District Minor 73305

**INTERGOVERNMENTAL AGREEMENT**  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF YUMA

THIS AGREEMENT is entered into this date March 10th 2005, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF YUMA, acting by and through its MAYOR and CITY COUNCIL, (the "City")

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this Agreement and has by resolution a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City

3. The parties agree with the approval of the Transportation Board, and the transfer of funds estimated at but not to exceed \$180,000.00, that the State will repair and replace the drainage HDPE pipe and abandon ownership jurisdiction and maintenance responsibilities of two (2) existing drainage easements located in the Northwest Quadrant of Interstate Route 8 and the Araby Road Interchange. The City will accept ownership jurisdiction and maintenance responsibilities for the two (2) drainage easements, hereinafter referred to as the "Project". Said drainage easements are to be abandoned to the City for a continued transportation use to properly drain roadways.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

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NO. 27411  
Filed with the Secretary of State  
Date Filed: 03/10/05  
Janice K. Brewer  
Secretary of State

By: David D. Greenwald

## **II. SCOPE OF WORK**

### **1. The City Will:**

a Upon execution of this Agreement, invoice the State for the estimated amount, not to exceed \$180,000 00 associated with the abandonment of two (2) existing easements and repair and replace the existing drainage HDPE pipe

b Upon approval of abandonment resolution of the State's Transportation Board and transfer of funds, the City will accept ownership jurisdiction and maintenance responsibilities and agrees to be bound by the terms and conditions of the two (2) existing drainage being abandoned herein. The City shall demonstrate and ensure the basin has adequate capacity to handle drainage water should any modification be presented. The City understands that said area is being abandoned for a continued transportation use and that a future disposal of any portion of this drainage easements being abandoned herein will be coordinated with the State.

c Waive the requirements of Arizona Revised Statue 28-7209.

### **2. The State Will:**

a Upon approval of and by resolution of the State Transportation Board and the transfer of funds in an amount not to exceed \$180,000 00 abandon ownership jurisdiction and maintenance responsibilities for the two (2) existing drainage easement as recorded 3-29-67 in Docket 470 page 150 and 10-20-67, in Docket 495, page 526 Yuma County Records attached hereto and made a part hereof.

b Upon execution of this Agreement and receipt of an invoice from the City, remit an amount, not to exceed \$180,000 00 to the City for the cost of the Project

c Provide the City with written recommendations to any modification plan presented by said City to ensure the basin has adequate capacity to handle drainage. Coordinate with the City on future disposal of any portion of the drainage easements if no longer required for the use they were originally granted.

## **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in force and effective upon ownership jurisdiction conveyance and the transfer of funds to the City. The City shall provide provisions for maintenance perpetually; the State shall in no way be obligated to maintain said Project. The State reserves the right to cancel this Agreement at any time prior to approval, with a thirty-day (30) written notice to the other party

2 The parties to this Agreement agree that the State of Arizona shall be indemnified and held harmless by the City for the vicarious liability of the State as a result of entering into this Agreement. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save, hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments agencies, officers and employees, the City any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or reasonable attorneys' fees

3. This Agreement shall become effective upon filing with the Secretary of State

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Sections 38-511

5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Sections 12-1518.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, AZ. 85007 FAX (602) 712-7424

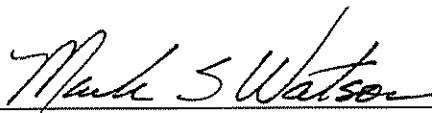
City of Yuma, City Administrator  
One City Plaza  
P.O. Box 13014  
Yuma, Arizona 85366-3014

11. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

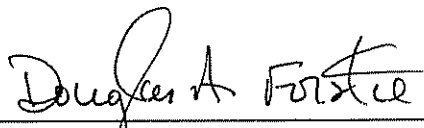
**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.

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**CITY OF YUMA**

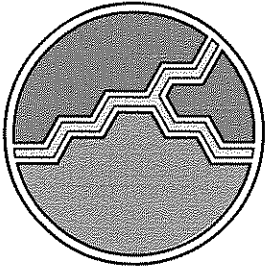
By   
MARK S. WATSON  
City Administrator

**STATE OF ARIZONA**  
Department of Transportation

By   
DOUGLAS A. FORSTIE, P.E.  
Deputy State Engineer, Operations

ATTEST

By   
BRIGITTA M. KUIPER  
City Clerk



**City of YUMA**

**Office of the  
City Clerk**

One City Plaza  
P.O. Box 13012  
Yuma, Arizona 85366-3012  
(928) 373-5035  
FAX (928) 373-5036  
TTY (928) 373-5149

**CERTIFICATION**

I, Brigitta M. Kuiper, do hereby certify that I am the duly appointed City Clerk of the City of Yuma, Arizona, and that the attached Resolution, R2005-11, is a true and correct copy of the resolution on file in the Office of the City Clerk.

Brigitta M. Kuiper, City Clerk

2/23/05

Date

RESOLUTION NO. R2005-11

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA,  
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE  
CITY OF YUMA AND THE STATE OF ARIZONA, RELATED TO THE  
ABANDONMENT OF CERTAIN STORMWATER DRAINAGE FACILITIES TO  
THE CITY OF YUMA**

WHEREAS, the City of Yuma (City) and the State of Arizona (State) have need to provide stormwater conveyance and disposal facilities for their separate projects, in the vicinity of the State's Federal Interstate 8 (I-8) and the City's Araby Road; and,

WHEREAS, the City and the State recognize that the construction, operation and maintenance of a facility or facilities that can accommodate the drainage requirements of both entities would result in the conservation of resources for the City and the State; and,

WHEREAS, the State has undertaken the responsibility to design, construct and maintain a stormwater conveyance and disposal system for the vicinity of I-8 and Araby Road and that that system was constructed with excess capacity; and,

WHEREAS, the City has oversight and jurisdiction regarding stormwater collection, conveyance and disposal for lands in the vicinity of I-8 at Araby Road; and

WHEREAS, the State desires to relinquish ownership, operation, maintenance and administration responsibilities for those portions of its I-8 drainage facilities lying northerly of the North right-of-way line of I-8, in the vicinity of Araby Road.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Yuma, Arizona, that the City Administrator is authorized and directed to execute an Intergovernmental Agreement with the State of Arizona, as shown in Exhibit A, attached hereto and by this reference made a part hereof, for the abandonment of certain stormwater drainage facilities to the City of Yuma.

Passed and adopted this 16th day of February, 2005.

APPROVED:



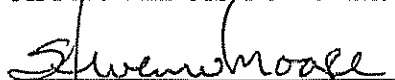
Lawrence K. Nelson  
Mayor

ATTESTED:



Brigitta M. Kuiper  
City Clerk

APPROVED AS TO FORM:



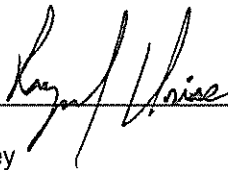
Steven W. Moore  
City Attorney

ATTORNEY APPROVAL FORM

FOR THE CITY OF YUMA

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF YUMA, an agreement among public agencies, which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954, and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement

DATED this 17 day of February, 2004

  
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Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

TERRY GODDARD  
ATTORNEY GENERAL

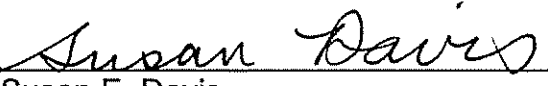
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-1419TRN (**JPA 04-046**), an Agreement between public agencies, i.e., The State of Arizona and The City of Yuma, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: March 3, 2005

TERRY GODDARD  
Attorney General

  
Susan E. Davis  
Assistant Attorney General  
Transportation Section